

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION**

**JAMES E. CLEMONS**  
**ADC # 78567**

**PETITIONER**

**v.**

**No. 5:12-cv-176-DPM-JJV**

**RAY HOBBS, Director, Arkansas  
Department of Correction**

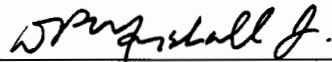
**RESPONDENT**

**ORDER**

Clemons has objected to Magistrate Judge Volpe's proposed findings and recommendations. *Document Nos. 8 & 10*. Judge Volpe recommended that the Court dismiss Clemons's *habeas corpus* petition as untimely. *Document No. 8*. The conclusion hinges on whether Clemons properly filed a timely Rule 37 petition in state court, thereby tolling the statute of limitations. He sent it to the circuit judge; did he file it with the circuit clerk? Judge Volpe, like the Arkansas Supreme Court before him, concluded that Clemons failed to do so. *Document No. 8, at 4; Clemons v. State*, 2011 Ark. 345. But in response, Clemons has submitted what appears to be a file-marked copy of his Rule 37 petition. The document reflects filing by the Union County Clerk in December 2010. *Document No. 9, at 29*. This is at odds with the circuit clerk's affidavit. *Document No. 7-6*.

On *de novo* review, the Court declines to adopt Judge Volpe's recommendation, *Document No. 8*. FED. R. CIV. P. 72(b)(3). The Court appreciates Judge Volpe's good work thus far and refers the case back to him to sort out the filing issue and for further development in general.

So Ordered.



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D.P. Marshall Jr.  
United States District Judge

24 August 2012